

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.T., J.T., C.K., and J.K., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DIANNA KOHNS,

Respondent-Appellant,

and

DAVID KOHNS,

Respondent.

UNPUBLISHED

December 12, 2000

No. 225457

Oscoda Circuit Court

Juvenile Division

LC No. 99-000061-NA

Before: O’Connell, P.J., and Zahra and B.B. MacKenzie,* JJ.

MEMORANDUM.

Respondent-appellant (hereinafter respondent) appeals as of right from an order terminating her rights to her four minor children pursuant to MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii). We affirm.

Respondent first argues that the trial court erred in considering the testimony of one of her daughters during the initial dispositional hearing. Respondent cites language contained in MCR 5.974(D)(3) providing that the court’s finding must be on the basis of “clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction” Respondent asserts that when the court allowed the child to testify at the disposition and termination hearing, it impermissibly considered evidence beyond that which was introduced at the trial and plea proceedings on the issue of the court’s jurisdiction. Respondent further argues that without the disputed evidence, the court would not have been able to terminate her parental rights at the initial dispositional hearing.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

We reject respondent's argument. MCR 5.974(D)(3) allows a court to terminate a parent's rights at the initial dispositional hearing if it finds "on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition: (a) are true, (b) justify terminating parental rights at the initial dispositional hearing, and (c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3)," unless termination is clearly not in the child's best interest. Nothing in the rule prevents a court from considering additional testimony. To require a court to make its decision on the basis of less, rather than more, evidence would be illogical.¹

Respondent next argues that the record lacked clear and convincing evidence to justify the court's decision to terminate respondent's parental rights. We disagree. This Court reviews for clear error a trial court's decision to terminate parental rights. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000); MCR 5.974(i). We have carefully reviewed the lower court record and conclude that the evidence was sufficient to establish that respondent took the role of passive observer to her daughter's plight, and that she had an established pattern of failing to protect her children. Further, respondent's failure to protect her children in the past made more likely that she would fail to protect her children from other forms of harm in the future. Therefore, the trial court's finding that petitioner established a statutory ground to terminate respondent's parental rights, and that the termination was in the children's best interest, was not clearly erroneous.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie

¹ In any event, the disputed evidence was not determinative of the outcome of this case. The child's testimony for the most part echoed the testimony that Timothy Jensen gave at the preliminary hearing. It was only more damaging with respect to respondent insofar as the child testified that she informed her mother of her stepfather's actions sixteen or seventeen times, whereas Jensen testified that the child told him that she had informed her mother only three times.